

APPENDIX A

(Filed May 8, 1965)

**United States District Court
For The Western District Of Michigan
Southern Division**

JAMES SAILORS, et al,
Plaintiffs,

vs.

Civil Action No. 4480

**THE BOARD OF EDUCATION OF THE
COUNTY OF KENT, et al,**
Defendants.

STIPULATION OF FACTS

Counsel for the respective parties hereby stipulate the following facts:

1. This cause was commenced February 15, 1963 seeking an injunction and declaratory relief. The complaint alleges that this action arises under the Fourteenth Amendment to the United States Constitution and §§ 1981 and 1983 of Title 42 of the United States Code and that jurisdiction is conferred by §§ 1331 and 1343 of Title 28 of the United States Code.

2. Prior to December 31, 1962, plaintiffs James Sailors, Loretta Sailors, Seymour Koning, Mildred Koning, Grazi Mullay and Rosalie Mullay and intervening plaintiffs William A. Duthler, Anna M. Duthler, Harvey A. Duthler and Edna M. Duthler were resident-electors and free-holders of Paris Township, Kent County, Michigan and were school electors of defendant Kentwood Public Schools, Kent County, Michigan, a school district of the fourth class, under the provisions of chapter 3, part 1 of the school code of 1955, as amended (Act No. 269 of the Public Acts of Michigan of 1955, as amended; § 340.51 of the 1948

Compiled Laws of Michigan, et seq; Michigan Statutes Annotated § 15.3051, et seq).

3. Plaintiff The Board of Education of the City of Grand Rapids has continued to be and is now a school district of the second class under the provisions of chapter 5, part 1 of the school code of 1955, as amended (CL 1948, § 340.141, et seq; MSA § 15.3141, et seq), located within the city limits of intervening plaintiff, The City of Grand Rapids.

4. Intervening plaintiff The City of Grand Rapids is a home rule city, under Act No. 279 of the Public Acts of Michigan of 1909, as amended (CL 1948, § 117.1, et seq; MSA § 5.2071, et seq).

5. At the time of commencement of this action, February 15, 1963, defendant the Board of Education of the County of Kent was the board granted supervision and control of the county school district, under chapter 8, part 1 of the school code of 1955, as amended (CL 1948, § 340.291, et seq; MSA § 15.3291, et seq), the powers and duties of which were set forth in § 297, chapter 8, part 1 of the school code of 1955, as amended (CL 1948, § 340.297; MSA 15.3297), which section is attached hereto and marked Exhibit 1.

(a) At annual school elections held in Kent County in 1957, the provisions of §§ 309 to 327, inclusive of the school code of 1955, as amended (CL 1948, §§ 340.309 to 340.327, inclusive; MSA §§ 15.3309 to 3327, inclusive) with reference to special education became effective and from 1957 defendant the Board of Education of the County of Kent, since March 28, 1963 known as the "Board of Education of the Kent Intermediate School District" has levied each year an ad valorem tax of one-half mill for such purpose. The annual amounts of such levy for the operation of such special education program are set forth in Exhibit 2.

6. Act No. 190 of the Public Acts of 1962, effective March 28, 1963, repealed all of chapter 8, part 1 of the school code of 1955, as amended, with reference to county school districts and in lieu thereof added 45 new sections to stand as §§ 291a to 328a of the school code of 1955 (CL 1948, §§ 340.291a to 328a; MSA §§ 15.3291(1) to 15.3328(1)).

Under this statute the name of defendant the Board of Education of the County of Kent became the "Board of Education of the Kent Intermediate School District". The special education provisions became §§ 307a to 324a (CL 1948, §§ 340.307a to 340.324a; MSA §§ 15.3307(1) to 15.3324(1)). The powers and duties of the board of education of an intermediate school district are set forth in § 298a of the new act [CL 1948, § 340.298a; MSA §15.3298(1)], which section is attached hereto and marked Exhibit 3.

(a) Commencing with the year 1963, defendant, as the Board of Education of the Kent Intermediate School District, under said Act No. 190 PA 1962, levied ad valorem taxes for operations on a county-wide basis, in addition to the one-half mill for special education (see Exhibit 2), as follows: 1963, \$92,781.94 (.08 mill) and 1964, \$100,938.85 (.085 mill).

7. Defendant Kentwood Public Schools was created for the purpose of providing kindergarten through 12th grade education, July 1, 1958, by the consolidation of 6 elementary school districts, one of them being the so-called Alexander Hamilton School District, upon which the modern 14-classroom Alexander Hamilton School was located, under the provisions of chapter 3, part 2 of the school code of 1955, as amended (CL 1948 § 340.401, et seq; MSA §15.3401, et seq, see Exhibit D attached to the complaint). Since the creation of defendant Kentwood Public Schools July 1, 1958, and prior to the annexation and transfer of the 4 areas involved in this litigation, there were 9 detachments of territory from defendant Kentwood Public Schools by annexation under the home rule act (one of such annexations having been voted before, but did not become effective until after defendant Kentwood Public Schools was created) and the operation of § 143 of the school code of 1955, with the 1962 state equalized valuation of \$10,935,523, \$12,726,860 in 1963 and \$14,018,810 in 1964 (see Exhibit 4 which is a district map of defendant Kentwood Public Schools showing the 9 detachments of territory, which are numbered 1 through 9 on the legend). These 9 detachments resulted in an average valuation per pub-

lic school child of \$11,151.00 in 1962 as compared with \$14,350.00 prior to such detachments.

(a) Commencing with 1958 through December 31, 1962 there were 35 annexations of territory to intervening plaintiff The City of Grand Rapids under the home rule act and by operation of §143 of the school code of 1955 (CL 1948, § 340.143; MSA § 15.3143) which provided as follows:

"Whenever territory shall be annexed to a city comprising a school district of the second class, such territory, by such annexation, shall become and be part of the school district of that city;"

such territory, by such annexations, became a part of plaintiff school district. During this period the valuation of all the areas annexed to plaintiff school district totalled \$89,277,206 and such areas contained 4,403 children in the public schools resulting in an average valuation per public school child of \$20,274 as compared with \$22,426 per child in plaintiff school district prior to such annexations. See Exhibit 5 for map showing growth of Grand Rapids and plaintiff school district during this period and Exhibit 6 for map showing all the school districts within Kent County as of July 1, 1963.

8. The 1962 Michigan legislature in effect repealed § 143 of the school code of 1955 by Act No. 177 PA 1962, approved by the Governor of the State of Michigan May 17, 1962, but, as the act was not given immediate effect, it did not take effect until March 28, 1963.

9. On proper petitions to the Board of Supervisors, Kent County, Michigan, signed by the requisite number of qualified electors and freeholders residing in the City of Grand Rapids and in Paris Township, and after consideration by the Board of Supervisors, the Supervisors ordered that special elections be held in said city and township February 19, 1962, for the purpose of submitting to the electors in the City of Grand Rapids and in Paris Township the following 3 questions:

"Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Breton Ave-

nue area, be annexed to the City of Grand Rapids, Michigan?"

"Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Kendall area, be annexed to the City of Grand Rapids, Kent County, Michigan?"

"Shall territory in the Township of Paris, Kent County, Michigan, popularly known as Fuller-44th area, be annexed to the City of Grand Rapids, Kent County, Michigan?"

The individual plaintiffs and individual intervening plaintiffs understood that by voting annexation to the City of Grand Rapids, under the home rule act, the territory annexed upon which they resided would become a part of plaintiff school district.

The resolutions of the board of supervisors provided that if the annexations were accomplished, they would be effective as of December 31, 1962, at 12:01 a.m.

All of the annexations proceedings were regular and were taken under the provisions of §§ 6, 7, 8 and 9 of the home rule act, as amended. The votes were favorable on the 3 proposed annexations. See Exhibits 7, 8 and 9. See Exhibits 10, 11 and 12 showing territory involved in the 3 annexations.

10. The Alger Street area, located in Paris Township within the boundaries of defendant Kentwood Public Schools, and uninhabited, was detached from Paris Township and annexed to the City of Grand Rapids by the affirmative vote of the legislative bodies of said township and city, under the provisions of § 9 of the home rule act, as amended, and became effective December 26, 1962. See Exhibit 13 for territory involved. Prior to such detachment, plaintiff school district had obtained appraisals on and had negotiation with the owners of a part of such area, intending purchase thereof for a school site.

11. The legal descriptions of the 4 areas are found in Exhibit D attached to the complaint.

12. December 31, 1962, by the annexation of the so-called Breton Avenue area, the Kendall area, the Fuller-

44th Street area and the Alger area (December 26, 1962) to the City of Grand Rapids, under the home rule act, those areas became a part of plaintiff school district, by virtue of said § 143 of the school code of 1955, as amended (CL 1948, § 340.143; MSA § 15.3143).

13. By virtue of the operation of said § 143 of the school code of 1955 the individual plaintiffs and the individual intervening plaintiffs became electors of the City of Grand Rapids and school electors of plaintiff school district.

14. January 1, 1963, the board of education of defendant Kentwood Public Schools unanimously adopted resolutions requesting defendant the Board of Education of the County of Kent to detach the Breton Avenue, Kendall, Fuller-44th Street and Alger Street areas from plaintiff The Board of Education of the City of Grand Rapids and attach the areas to defendant Kentwood Public Schools, pursuant to the provisions of chapter 5, part 2 of the school code of 1955, as amended, being the chapter of the school code providing for the transfer of territory between school districts (CL 1948, § 340.461, et seq; MSA § 15.3461, et seq). See Exhibit D attached to the complaint.

The individual plaintiffs and intervening individual plaintiffs, residents of the areas affected and/or taxpayers, were not consulted concerning their wishes or desires on this proposed detachment. Neither were the school electors of defendant Kentwood Public Schools consulted concerning their wishes or desires when the Alger area was annexed by joint resolution. The other three areas were annexed by petition and popular vote of the electors of Paris Township and Grand Rapids, under the home rule act. Kentwood School electors residing outside Paris Township boundaries had no right to vote on the question and were not consulted as to their wishes or desires. See Exhibits 7, 8 and 9 for tabulation of votes.

15. Defendant the Board of Education of the County of Kent accepted the transfer petitions, and after posting and publishing notice as required by § 462 of the school code of 1955 (CL 1948, § 340.462; MSA § 15.3462) held meetings January 29, 30, 31, February 5 and 6, 1963, at which meetings plaintiff The Board of Education of the City

of Grand Rapids, defendant Kentwood Public Schools and defendant the Board of Education of the County of Kent were represented by counsel, sworn testimony was taken for and against such transfers, cross-examination of witnesses was allowed and all proceedings were taken stenographically by a court reporter, the transcript of which proceedings was introduced, received and marked Exhibit 1 at the hearing held before this Court March 1, 1963. At the final meeting held by defendant the Board of Education of the County of Kent February 6, 1963, the president announced the intention of the board to render a decision on February 25, 1963. The individual plaintiffs, intervening individual plaintiffs or other resident taxpayers of such 4 areas were not personally served with notice of such meetings.

(a) At the opening of the meeting held January 29, 1963, plaintiff moved dismissal of the proceedings by defendant the Board of Education of the County of Kent on the grounds that the statute (CL 1948, §§ 340.461 to 340.467; MSA §§ 15.3461 to 15.3467) failed to guarantee due process of law and the equal protection of the laws; that the notice requirements were inadequate and violated the federal constitution and that defendant the Board of Education of the County of Kent was unconstitutionally constituted in that it is an unrepresentative body and was elected contrary to the requirements of the equal protection clause of the federal constitution. This motion was denied by defendant the Board of Education of the County of Kent. See Exhibit 1 introduced and received in evidence at the hearing before this Court March 1, 1963.

(b) At the time of the meetings mentioned above, one member of defendant the Board of Education of the County of Kent, Mary Keeler, was a member of plaintiff The Board of Education of the City of Grand Rapids and a resident of the City of Grand Rapids. At the opening of the meeting held January 29, 1963, counsel for defendant Kentwood Public Schools requested that member Mary Keeler excuse herself from participating in the meetings on the ground that she was a member of plaintiff The Board of Education of the City of Grand Rapids, which was a party to the proceedings. This she refused to do,

unless the other members so requested. The other members requested that she sit (see Exhibit 1 introduced and received in evidence at the hearing before this Court March 1, 1963).

16. February 15, 1963, plaintiffs filed the complaint herein with the Honorable W. Wallace Kent, United States District Judge, who on that date entered an order restraining defendant the Board of Education of the County of Kent, the individual members of said board, their agents, servants, employees and attorneys, from assuming jurisdiction and authority on the question of detaching the areas described in Exhibit D attached to the complaint from The School District of the City of Grand Rapids and attaching the same to defendant Kentwood Public Schools; from conducting any further hearings in connection with the same and from rendering a decision or making any order in connection with the transfer petition filed by defendant Kentwood Public Schools and pending before defendant the Board of Education of the County of Kent.

17. On motion of defendant Kentwood Public Schools, the Honorable W. Wallace Kent revoked and set aside the temporary restraining order February 25, 1963, at 3:45 o'clock p.m. See Exhibit 14.

18. The evening of February 25, 1963, defendant the Board of Education of the County of Kent adopted the resolution of transfer, which is Exhibit H attached to paragraph 13 of the complaint as added by amendment filed February 27, 1963, and which is attached hereto as Exhibit 15. No reasons, conclusions, or findings of fact, either orally or in writing, were rendered.

(a) At the hearing before this Court March 1, 1963, the motion of the Attorney General of the State of Michigan to intervene as a party defendant was granted.

19. Defendant Russell Emmons, a member of defendant the Board of Education of the County of Kent, participated fully in the deliberations, made a second to the motion to transfer and voted for the transfer. At the same time, his school district (Grandville) had a like petition pending before the county board to transfer property from plaintiff school district to the Grandville School District.

Member Mary Keeler voted against the transfer resolution.

20. A county board of education is composed of 5 members elected under the provisions of § 294 of the school code of 1955, as amended (CL 1948, §340.294; MSA § 15.3294 — see also § 292 of the school code of 1955; CL 1948, § 340.292; MSA § 15.3292).

Said § 294 of the school code of 1955 was repealed by said Act No. 190 PA 1962, which became effective March 28, 1963 and §§ 294a through 294h were added. While in effect the former method of election was retained (see § 294a), §§ 294b through 294h provided for the popular election of board members on referendum either by action of the intermediate board (§ 294c) or on petition of a majority of the boards of education within that intermediate school district representing more than 50% of the children on the last school census in the county district.

Sections 294c through 294h, as added by said Act No. 190 PA 1962, were amended by Act No. 290 PA 1964, effective August 28, 1964. The 1964 amendment to § 294c clarified the method of calling a referendum for the popular election of members of boards of education of intermediate school districts by the following language:

“The board shall submit the question upon receipt of resolutions adopted by a majority of the boards of education of constituent school districts and representing more than 50% of the children on the last school census in the intermediate district.”

(a) The individual defendants, as members of defendant the Board of Education of the County of Kent, who received the transfer petition of defendant Kentwood Public Schools and acted thereon, were residents of and were elected for terms set forth as follows:

Victor Weller (6 yrs., 1963)	Rockford (Algoma No. 1 Fractional)
C. B. Leaver (6 yrs., 1959)	Kent City (Tyrone No. 4 Fractional)
Dewey Jaarsma (6 yrs., 1961)	Byron (Byron No. 1 Fractional)

Russell Emmons (6 yrs., 1963)	Grandville (Wyoming No. 1 Fractional)
Mary Keeler (2 yrs., 1963)	Grand Rapids (Grand Rapids No. 1)

In 1962 Mary Keeler was elected by the remaining members of the board to fill a vacancy until the 1963 election, as authorized by both §§ 294 and 294a.

(b) Of the 5 elected members of defendant the Board of Education of the County of Kent, plaintiff school district had but one, namely, Mary Keeler, and under the provisions of both §§ 294 and 294a would not be entitled to more than 2, although plaintiff school district had and has a population in excess of all other school districts in Kent County combined.

Under the referendum provision of § 294c of said Act No. 190 PA 1962, as amended by Act No. 290 PA 1964, plaintiff school district with a majority of the population of Kent County could not, acting alone, compel such referendum.

21. Section 294 of the school code of 1955, which prescribed the method of electing members of county boards of education provided in substance that the county superintendent of schools of each county school district, by reasonable notice sent by registered mail, call a meeting of the secretaries of boards of primary and fourth class school districts and the presidents of boards in other school districts, within the jurisdiction of the county school district, at which meeting members of the county board of education were elected by a majority vote of those present. The board of any of the school districts could by resolution designate any other member of the board to represent it at such meeting. The members of the county board of education served a term of 6 years and elections were held biennially, which meant that biennially either 2 members or 1 member were elected depending upon the number of offices expiring. Terms commenced July 1.

Section 294a under the new act, retained the substance of former § 294 with reference to such elections. Section 294a substituted notice by certified mail rather than registered mail. Section 294 provided that if a vacancy was

not filled within 30 days by the majority of the remaining members, the vacancy would be filled by the county board of supervisors. Section 294a substituted the state board of education. Section 294 provided that not more than 2 members of the county board of education could be elected from any one township or city. Section 294a provides that not more than 2 members of the board shall be from the same school district unless there are fewer districts than there are positions to be filled.

September 29, 1961, there were 56 primary, fourth class and third class and one second class district (plaintiff school district) within Kent County. Through consolidations and annexations the total number of school districts within Kent County was reduced in 1964 to 39. The total population of Kent County as of the 1960 federal decennial census was 363,187. The population of plaintiff school district as of the same census, as adjusted for annexations, was 201,777 or 55.6% of the total.

(a) Ashley School District in Kent County and under the jurisdiction of defendant the County Board of Education of Kent County had a population of 145 and 1 vote. Boyd School District had a population of 191 and 1 vote; Dodge School District had a population of 117 and 1 vote; Hoag School District had a population of 111 and 1 vote; Nelson Center School District had a population of 99 and 1 vote. The School District of the City of Grand Rapids had a population of 201,777 and 1 vote. For population variance ratios see Exhibit 16.

(b) Kent County had a total 1963 state equalized valuation of \$1,165,923,800, of which valuation plaintiff school district had \$636,758,000 or 54.6%. Kent County had a total 1964 state equalized valuation of \$1,193,579,600, of which valuation plaintiff school district had \$615,235,596 or 51.5%. See Exhibit 17.

(c) Kent County had a total 1963 school census (0-19) of 157,915, of which plaintiff school district had 75,863 or 48.04%. Kent County had a total 1964 school census of 160,638 of which plaintiff school district had 76,395 or 47.6%. See Exhibit 18.

(d) During the last two years, a majority of the school districts in Kent County with the smallest school

census has averaged less than 2% of the total school census of Kent County. See Exhibit 19.

22. March 1, 1963, this Court held a hearing on the motions of the defendants to dismiss the complaint and other pending motions, after which it entered the order of March 4, 1963.

In substance the order of March 4, 1963, denied the motion of plaintiffs to reinstate the restraining order vacated by the Honorable W. Wallace Kent, entered February 25, 1963, and likewise denied plaintiffs' application for an interlocutory injunction at that time. Defendants' motion to dismiss the complaint was held in abeyance and the Court retained jurisdiction "awaiting the plaintiffs' exercise of their administrative remedies provided by the Michigan statutes, and, if they so choose, their application to the Supreme Court of Michigan for a writ of certiorari to review the action of the State Board of Education."

23. Pursuant to § 467 of the school code of 1955, as amended (CL 1948, § 240.467; MSA § 15.3467) plaintiffs appealed the order of transfer entered February 25, 1963, by defendant the Board of Education of the County of Kent to the State Board of Education. The State Board of Education, which is not a party to this suit, was constituted by § 6, article XI of the 1908 Constitution of the State of Michigan, the 4 members of which were elected at large by the people of the State of Michigan.

24. The State Board of Education, after notice to plaintiffs as appellants and defendants as appellees and having taken testimony of all persons called as witnesses by the parties and the arguments of the attorneys, entered the amended order June 5, 1963 (which is Exhibit C attached to the complaint as amended March 9, 1964) without reasons, conclusions or findings of fact. No oral or written opinion was given. See Exhibit 20. The amended order of the State Board of Education, entered June 5, 1963, set aside the action of defendant the Board of Education of the County of Kent taken February 25, 1963, and ordered that the territory involved be transferred from the school district of The City of Grand Rapids to Kentwood Public Schools, except for the property owned and occupied by the individual plaintiffs, James Sailors and Loretta Sailors, his wife, Seymour Koning and Mildred Koning, his wife,

and Grazi Mulloy and Rosalie Mulloy, his wife, and 2 other lots owned by Louise M. Scalice and Dorothy Biermacker. See Exhibits 21 and 22. The transfer included property owned by the intervening plaintiffs and on which they reside.

The only explanation given to this Court for the exemption of the individual plaintiffs from the amended order of the State Board of Education, entered June 5, 1963, was that their wish to be in plaintiff school district was granted. See statement of Assistant Attorney General Eugene Krasicky attached as Exhibit 23.

25. The territory transferred by order of the State Board of Education had a 1964 state equalized valuation of \$5,369,584. The 1964 tax levy by defendant Kentwood Public Schools against such territory for all school purposes totalled \$124,554.35 or a tax rate of 23.2 mills on state equalized value. The 1964 levy by plaintiff school district against such territory totalled \$84,839.43 or a tax rate of 15.8 mills. The Alexander Hamilton school building is located within the area transferred to defendant Kentwood Public Schools. By stipulation filed in this cause, dated September 10, 1964, if the transfers are voided, the operating taxes for 1964 which were collected by defendant Kentwood Public Schools will be turned over to plaintiff school district and the levy made by defendant Kentwood Public Schools in 1964 for debt retirement for the 1964 bond issue will be returned to the taxpayers in the 4 areas. See the stipulation with reference to the collection and remittance of 1964 school taxes dated and filed herein September 10, 1964.

26. September 3, 1963, William A. Duthler, Anna M. Duthler, Harvey A. Duthler and Edna M. Duthler, who were, prior to December 31, 1962, resident-electors and freeholders of Paris Township, Kent County, Michigan and were school electors of defendant Kentwood Public Schools, but are now resident-electors and freeholders of the City of Grand Rapids, while school electors of defendant Kentwood Public Schools, filed a motion to intervene as parties plaintiff, which motion was granted by order of this Court entered June 4, 1964.

The intervening individual plaintiffs were not consulted concerning their wishes or desires on the transfer and had no right to vote thereon. Neither were the school electors

of defendant Kentwood Public Schools consulted concerning their wishes or desires on the annexation of the Alger area. The other three areas were annexed by petition and popular vote of the electors of Paris Township and Grand Rapids. Kentwood voters outside Paris Township boundaries had no right under the home rule act to vote and were not consulted as to their wishes or desires. See Exhibits 7, 8 and 9 for tabulation of votes.

27. Plaintiffs did not make application to the Supreme Court of Michigan for leave to appeal the amended order of the State Board of Education entered June 5, 1963, and the order of the State Board of Education has become final.

28. Frank J. Kelley, Attorney General of the State of Michigan, intervening defendant herein, requested Lynn M. Bartlett, Michigan State Superintendent of Public Instruction, to conduct a survey of all of the intermediate school districts to ascertain for the past ten years the number of transfers granted, transfers modified and transfers denied for each intermediate school district. Information was also requested showing intermediate school district budgets for 1964, whether the intermediate school district is conducting a special education program and the number of tax mills voted for special education. Responses were received from the intermediate school superintendents between June 15, 1964 and July 15, 1964 and the results of the survey are attached hereto, showing the information for each intermediate school district. In addition, appended hereto is a map showing the intermediate school districts, including those that had been annexed and consolidated, and a tabulation of total of transfers granted, transfers modified, and transfers denied with an average of such requests for 10 years.

The survey of intermediate school districts is attached hereto as Exhibit 24, consisting of 12 pages, the map of the intermediate school districts is attached as Exhibit 25, consisting of 1 page, and the table of the summary of transfers granted, etc. is attached hereto as Exhibit 26, consisting of 2 pages.

29. Since February 25, 1963, when the ex parte temporary restraining order issued in this cause was dissolved (Exhibit 14) and defendant the Board of Education

of the County of Kent ordered the transfer of the 4 areas (Exhibit 15), defendant the Board of Education of the County of Kent has exercised the powers and performed the duties granted and imposed on it by said § 297 of the school code of 1955, as amended (Exhibit 1) and since March 28, 1963, said defendant, now known as the Board of Education of the Kent Intermediate School District, has exercised the powers and performed the duties granted and imposed on it by § 298a of the school code of 1955, as added by Act No. 190 PA 1962 (Exhibit 3).

In addition to exercising such powers and performing such duties, said defendant has entered 35 orders transferring certain territory between school districts within its jurisdiction, under the provisions of chapter 5, part 2 of the school code of 1955, as amended (CL 1948, § 340.461, et seq; MSA § 15.3461). See Exhibit 27.

30. March 16, 1963, territory with a 1964 state equalized valuation of \$14,659,195, was transferred by order of defendant the Board of Education of the County of Kent from plaintiff school district to Godwin Heights Public Schools. See item 63-4 on Exhibit 27.

May 17, 1963, territory, with a 1964 state equalized valuation of \$727,399, was transferred by order of defendant the Board of Education of the County of Kent from plaintiff school district to Grandville Public Schools. See item 63-9 on Exhibit 27.

The territory so transferred was uninhabited and had been previously annexed to the City of Grand Rapids under the home rule act and became part of plaintiff school district under said § 143 of the school code of 1955.

Both transfers were appealed by plaintiff school district and others to the State Board of Education, which confirmed said transfer by order entered June 5, 1963, on the Godwin transfer and by order entered August 13, 1963, on the Grandville transfer. Plaintiff school district and others made applications on both transfers to the Supreme Court of Michigan for leave to appeal the orders of the State Board of Education, asserting substantially the same constitutional questions asserted in the case at bar. Briefs were filed in each case in the Supreme Court of Michigan by the appellants and appellees and the Supreme Court of Michigan denied leave to appeal, by

order entered November 6, 1963, in the Godwin case and by order entered February 26, 1964, in the Grandville case. Appeal to the Supreme Court of the United States was not taken in either case. See supplemental motion of defendant Kentwood Public Schools to dismiss the complaint dated and filed herein March 2, 1964.

February 15, 1965, defendant the Board of Education of Kent Intermediate School District transferred territory with a 1964 state equalized valuation of \$46,200 from Godwin Heights Public Schools to plaintiff school district. See item 65-1 on Exhibit 27.

Including the transfers to defendant Kentwood Public Schools the net 1964 state equalized valuation of territory detached from plaintiff school district totalled \$20,709,978. With 20 public school children in membership in 1963, in said territory so detached, the 1964 state equalized valuation per membership child was \$1,035,499.

31. The Alexander Hamilton School, located within the transferred area, see Exhibit 21, is .7 miles distance from the residence of plaintiffs Sailors and Koning and 2.2 miles distance from plaintiffs Mullay. The nearest Grand Rapids school to the residences of Sailors and Koning, at the time of transfer, was Shawnee Park School which was 2.7 miles distance. The nearest Grand Rapids school to the residence of the Mullays, at the time of transfer, was the Alger School which was 2.7 miles distance. Since the transfer a new elementary school has been opened which is 2.1 miles distance from the residence of Sailors and Koning and 1.5 miles distance from the residence of the Mullays.

Dated: April 30, 1965.

**For Plaintiffs and
Intervening Plaintiffs**

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EXHIBIT 1

Powers and duties of the county board of education under the provisions of § 297 of the school code of 1955, as amended (CL 1948, § 340.297; MSA § 15.3297).

SEC. 297. The powers and duties of the county board of education shall be as follows:

(a) To receive from the county treasurer such reports of delinquent taxes due school districts as this official is required by law to file with township and city clerks and to compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer of each county shall, at the time of making monthly settlements with the several township and city treasurers of the county, file with the secretary of the county board of education a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which these delinquent school taxes shall have been paid. The county board of education shall, upon receipt of such statements, compute the amount of delinquent school taxes and interest thereon included in such statement that shall be due each school district of the county and shall, within 30 days from receiving the statement from the county treasurer, give notice to the secretary of each school board of the county of the amount of delinquent school taxes and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

(b) To recommend the purchase of library books for all school libraries and of all instructional equipment in school districts not employing a superintendent of schools.

(c) To employ a county superintendent of schools and such assistants, including in its discretion a deputy, as it shall deem necessary for the best interest of the county and to fix the compensation for the same except as otherwise provided in section 300 of this act. That part of the compensation of the county superintendent of schools as

is paid from county funds and the compensation of the deputy and assistants which shall include salaries and traveling expenses incurred in the discharge of their official duties and the necessary and contingent expenses of the office of the county board of education and the county superintendent of schools for printing, postage, stationery, record books, equipment, office and telephone rental, rent of rooms for teachers' or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, and elections conducted by the county board of education, shall be paid by the county treasurer after the same have been authorized by the county board of education from such amounts as may be appropriated therefor by the county board of supervisors. The county board of education shall employ and contract with for a term of not to exceed 4 years a county superintendent of schools who shall have the qualifications and perform the duties as provided in this act. On or before the close of each term, or sooner if there should be a vacancy, the superintendent's successor shall be employed as herein provided.

(d) Each county board of education shall make or cause to be made a map of the county, showing by distinct lines thereon the boundaries of each school district and parts of school districts therein, if such school districts exist, and shall number the same thereon as established by proper authority. One copy of such map shall be filed in the office of the county superintendent of schools, 1 copy shall be filed with the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction. If any division or alteration is at any time made in the boundary lines of any district the county board of education shall within 1 month thereafter, file a new map and copies thereof as aforesaid showing such changes.

(e) The county board of education shall cause to be taken an annual school census by the agency and in the manner provided in chapter 30, part 2 of this act, in each and every school district within the provisions of this act.

(f) The county board of education shall make out an annual budget showing the total amount required to carry on the lawful activities of the county board of education, which amount shall be assessed and collected at the same time and in the same manner as other county taxes are assessed and collected and paid out by the proper authorities of said county upon the direction of the county board of education.

(g) The county board of education shall be empowered to furnish services on a consultant or supervisory basis to any school district employing a superintendent of schools upon request of the board of education of that district.

(h) The county board of education shall be empowered to employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, and home-bound children of normal mentality: Provided, That no school district other than the county district is able or is willing to provide such services; And provided further, That such programs are previously approved by the superintendent of public instruction. Such programs when approved may be reimbursed in accordance with the provisions of chapter 17 of part 2 of this act.

(i) The county board of education shall be empowered to direct, supervise and conduct cooperative educational programs within the county in behalf of school districts which request such services from the county board of education. The county board of education is empowered to utilize any available funds, appropriated by the county board of supervisors for that purpose or allocated by boards of education of the cooperating school districts, and to accept contributions from other sources, for the purpose of financing the programs. Such funds shall be deposited with the county treasurer through the county superintendent of schools in a special fund and shall be disbursed as the county board of education shall direct. Notwithstanding any other provision of law, the county board of supervisors is hereby authorized to appropriate, and the boards of education of the various school districts are hereby authorized to allocate, available funds not otherwise obligated by law, for such educational programs. The county

board of education shall have power to employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

EXHIBIT 3

Powers and duties of the board of education of the intermediate school district under the provisions of § 298a of the school code of 1955, as added by Act No. 190 PA 1962, effective March 28, 1963 (CL 1948, § 340.298a; MSA 15.3298 (1)).

SEC. 298a. (1) The board shall:

(a) Perform such duties as required by law and by the superintendent of public instruction, but shall not supersede nor replace the board of education of any constituent school district, nor shall it control or otherwise interfere with the rights of constituent districts except as provided in this chapter.

(b) Employ a superintendent and such assistants, including, in its discretion, a deputy, as it deems necessary for the best interest of the district and fix the compensation for the same. The compensation of the superintendent and his deputy and assistants, which shall include salaries and travel expenses incurred in the discharge of their official duties and the necessary contingent expenses of the office of the board and the superintendent for printing, postage, stationery, record books, equipment, office and telephone rental, rental of rooms for teachers' or school officers' meetings, pupils' mental and achievement tests, expenses incurred in the health and social service program of the office, elections conducted by the board, expenses incurred by the board in the legal performance of its duties, expenses incurred for heat, light, electricity, insurance, buildings and grounds maintenance, per diem of board members, and their expenses incurred in traveling in the discharge of their official duties, reference books, professional journals, instructional supplies and equip-

ment, legal fees, janitorial supplies and equipment, shall be paid by the treasurer, after the same have been authorized by the board, from such amounts as have been levied and collected therefor by the county board of supervisors and from any other available funds. The board shall employ and contract for a term of not to exceed 4 years, a superintendent who shall have the qualifications and perform the duties as provided in this chapter. On or before the close of each term, or sooner if there is a vacancy, the superintendent's successor shall be employed as herein provided.

(c) Prepare an annual general budget which shall be in the same form as that provided for other school districts. On or before March 1 of each year the board shall submit such budget to a meeting of 1 school board member named from each constituent school district to represent such a district. At such meeting the president of the intermediate district board shall preside, the secretary shall keep the minutes and the representatives of constituent district boards shall by majority vote determine the maximum amount of the intermediate district general budget but shall not make final determinations as to line items in such a budget. Following such meeting the intermediate district board shall file its budget, the maximum amount of which shall not exceed that approved by the school board representative of constituent districts, with the county clerks of the counties in which it has territory. Each county clerk receiving the budget shall deliver it to the tax allocation board in the same manner as other school district budgets are handled.

The tax allocation board shall receive the budgets from its county clerk, shall treat them as other school district budgets are treated and shall allocate tax rates to intermediate school districts for the purposes set forth in this act. When the intermediate district board has received an allocation on the basis of its budget, it shall certify for collection to the city and township officials concerned a statement of the amount of taxes to be levied, which certification shall be made at the same time and in the same

manner as that of other school districts. The rate certified for levy shall not exceed the amount allocated.

On receipt of the statement from such board, the city and township officials responsible for the levying and collection of taxes shall spread on the tax roll an intermediate school district tax equal to the amount ordered spread, and shall collect such taxes in the same manner as other taxes are collected.

Taxes collected under the provisions of this chapter shall be paid over to the county treasurer in the same manner as other county taxes are paid over, and similar accounts and records shall be kept. The county treasurer shall pay over all funds received under this act to the treasurer of the board. County treasurers of counties in which fractions of the intermediate school districts operating under this act are situated shall pay over those funds collected under the act to the treasurer of the board.

Intermediate school district taxes shall be assessed, levied and collected as provided in Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Compiled Laws of 1948. Budgets shall be submitted and intermediate school districts shall be governed by the provisions of Act No. 62 of the Public Acts of 1933, as amended, being sections 211.201 to 211.217 of the Compiled Laws of 1948.

(d) Receive from the county treasurer such reports of delinquent taxes due school districts as he is required by law to file with township and city clerks and compute from such report the amount of delinquent school taxes due each school district in the county. The county treasurer of each county, at the time of making monthly settlements with the several township and city treasurers of the county, shall file with the secretary of the board a statement of all delinquent school taxes which are included in the amounts sent by the county treasurer to the several township and city treasurers of the county, together with the descriptions upon which the delinquent school taxes have been paid. The board, upon receipt of such statements, shall compute the amount of delinquent school taxes and interest thereon included in the statement which are due each school district of the county and, within 30 days from receiving the statement from the county treasurer, shall

give notice to the secretary of the board of education of each school district of the amount of delinquent school tax and interest thereon that belongs to his district and which was included in the amount sent by the county treasurer to the treasurer of the township or city in which his district is located.

(e) Prepare a map of the intermediate district annually as of July 1, showing by distinct lines thereon the boundaries of each constituent school district. One copy of such map shall be filed in the office of the superintendent, 1 copy shall be filed with each of the supervisors of the respective townships, and 1 copy shall be filed in the office of the superintendent of public instruction, and 1 copy shall be filed in the office of the secretary of state.

(f) Cause an annual school census to be taken by the agency and in the manner provided in sections 941 to 948 of this act, in each and every school district within the provision of this chapter.

(g) Furnish services on a consultant or supervisory basis to any constituent school district upon request of that district.

(h) Employ teachers meeting the qualifications as set up by the state board of education and the superintendent of public instruction for serving speech defective children, hard of hearing children who need lip reading training, mentally retarded, physically handicapped, emotionally distressed, homebound children of normal mentality and any other atypical children if the programs are previously approved by the superintendent of public instruction, and if no school district other than the intermediate district is able and willing to provide such services. The district, when the programs have been approved by the superintendent of public instruction, may be reimbursed in accordance with the provisions of sections 771 to 780 of this act.

(i) Direct, supervise and conduct cooperative educational programs in behalf of the constituent school districts which request such services. The board may utilize any available funds not otherwise obligated by law, and accept contributions from other sources, for the purpose of

financing the programs. The funds shall be deposited with the treasurer in a special fund and shall be disbursed as the board of education shall direct. Notwithstanding any other provision of law, the board of supervisors may appropriate, and the boards of education of the constituent school districts may allocate available funds not otherwise obligated by law, for such educational programs. The board may employ teachers and take any other action necessary to direct, supervise and conduct such educational programs.

(j) Conduct cooperative programs mutually agreed upon by the boards of not more than 3 intermediate school districts.

(k) When directed by the board of supervisors, establish, if the board deems necessary, a school for those persons of school age who are housed in children's homes operated by the juvenile court or who are living at home but assigned to such school by a juvenile court. The board of education may lease or purchase sites for such schools, build, lease or rent housing facilities for such schools, may employ such teaching and supervisory staff as is necessary to operate such schools, is authorized to make rules and regulations covering the operation of such schools, may exclude students for reason of persistent misbehavior, or bodily conditions and habits disturbing to the orderly conduct of the school, is authorized to classify and promote students for instructional purposes, and otherwise do all those things necessary to the proper conduct of such a school.

(2) Any member of the board may administer oaths for the qualifying of board members and oaths required in any other transaction connected with, or related to, the educational program of the intermediate school district.

APPENDIX B**(Filed August 11, 1965)****United States District Court
For The Western District Of Michigan
Southern Division**

**JAMES SAILORS, et al,
*Plaintiffs,*****vs.****Civil Action No. 4480****THE BOARD OF EDUCATION OF THE
COUNTY OF KENT, et al,
*Defendants.***

ISSUES OF LAW AGREED TO BY DEFENDANTS

The defendants agree to the following statement of issues of law.

ISSUES OF LAW

1. Does this Court have jurisdiction to invalidate an act of an allegedly malapportioned county (intermediate) board of education?
2. Is the composition of local units of government, such as county (intermediate) school boards of education, a state matter and not a subject within the jurisdiction of this Court?
3. Do school electors have an absolute right to vote for members of a county (intermediate) school board of education?
4. Does this Court have jurisdiction to consider the alleged malapportionment of a county (intermediate) school board of education upon the complaint of individual school electors and resident freeholders if such individuals do not have the absolute right to vote for members thereof?

5. Do the individual school electors and resident freeholders have any property rights in the territory of a school district?

6. Does this Court have jurisdiction to consider an alleged violation of due process of law upon the complaint of individual school electors and resident freeholders in the alteration of the boundaries of school districts?

7. Are Title 42, § 1981 and § 1983 U.S.C. violated as alleged by plaintiffs?

8. Do plaintiffs The Board of Education of the City of Grand Rapids, a school district created under the Constitution and laws of the State of Michigan, and the City of Grand Rapids, created as a home rule city, under the Constitution and laws of the State of Michigan, have any rights, privileges or immunities which they may invoke in opposition to the will of their creator?

9. Do the individual plaintiffs, whether intervening or not, have standing to invoke the Fourteenth Amendment to the Constitution of the United States?

10. Does chapter 5, part 2 of the school code of 1955 (the transfer chapter) violate, in any respect, the Fourteenth Amendment to the Constitution of the United States?

11. Does this Court have jurisdiction over the Michigan State Board of Education, created pursuant to the 1908 and 1963 Michigan Constitutions?

12. If this Court has jurisdiction over the Michigan State Board of Education, do plaintiffs, whether intervening or not, have any rights, privileges or immunities guaranteed by the Fourteenth Amendment to the Constitution of the United States, in proceedings before that Board to alter boundaries of school districts?

13. If this Court has jurisdiction over the Michigan State Board of Education and if plaintiffs (whether intervening or not) have rights, privileges or immunities guaranteed by the Fourteenth Amendment to the Constitution of the United States, in proceedings before that Board to alter boundaries of school districts, were any of such rights, privileges or immunities violated by the action of the Michigan State Board of Education by its amended order entered June 5, 1963?

14. If this Court has jurisdiction of the subject matter to consider the alleged malapportionment of defendant Kent County (intermediate) Board of Education, were the members of the board de facto officers and is the action taken by them as such board on February 25, 1963 the action of a de facto public body and valid in all respects?

Dated: August 10, 1965.

FRANK J. KELLEY,
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Intervening Defendant

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APPENDIX C

MICHIGAN CONSTITUTIONAL PROVISIONS RELATING TO EDUCATION

1908 Michigan Constitution, Article XI, Education

Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

. . .

State board of education; election; powers and duties. Sec. 6. The state board of education shall consist of four members. On the first Monday in April, nineteen hundred nine, and at each succeeding biennial spring election, there shall be elected one member of such board who shall hold his office for six years from the first day of July following his election. The state board of education shall have general supervision of the state normal college and the state normal schools, and the duties of said board shall be prescribed by law.

. . .

Primary school system. Sec. 9. The legislature shall continue a system of primary schools, whereby every school district in the state shall provide for the education of its pupils without charge for tuition; and all instruction in such schools shall be conducted in the English language. If any school district shall neglect to maintain a school within its borders as prescribed by law for at least five months in each year, or to provide for the education of its pupils in another district or districts for an equal period, it shall be deprived for the ensuing year of its proportion of the primary school interest fund. If any school district shall, on the second Monday in July of any year, have on hand a sufficient amount of money in the primary school interest fund to pay its teachers for the next ensuing two years as determined from the pay roll of said district for the last school year, and in case of a primary district, all tuition for the next ensuing two years, based upon the then enrollment in the seventh and eighth grades in said school

district, the children in said district shall not be counted in making the next apportionment of primary school money by the superintendent of public instruction; nor shall such children be counted in making such apportionment until the amount of money in the primary school interest fund in said district shall be insufficient to pay teachers' wages or tuition as herein set forth for the next ensuing two years.

1963 Michigan Constitution, Article VIII, Education.

Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Free public elementary and secondary schools; discrimination. Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

Convention comment.

This is a revision of Sec. 9, Article XI, of the present (1908) constitution which fixes responsibility on the legislature to provide "primary" education. To conform to present practice and court interpretations, "primary" is changed to "elementary and secondary." The balance of the section is excluded because its restrictions as to finance and definitions as to basic qualifications needed to be eligible for state aid are better left to legislative determination.

The anti-discrimination clause is placed in this section as a declaration which leaves no doubt as to where Michigan stands on this question.

Note: The convention comment above is quoted from Volume 1, Michigan Statutes Annotated, 1965 Revised Volume at page 615.

APPENDIX D

EXTRACTS FROM MICHIGAN STATUTORY PROVISIONS WITH REFERENCE TO THE TRANSFER OF TERRITORY BETWEEN SCHOOL DISTRICTS

Section 461 of The School Code of 1955 as amended; 1948 Michigan Compiled Laws, § 340.461; Michigan Statutes Annotated, § 15.2461

Transfer of territory between districts; resolution or petition, period for final action; approval by electors. Sec. 461. The county board of education may, in its discretion, detach territory from 1 district and attach it to another when requested to do so by resolution of the board of any district whose boundaries would be changed by such action, or when petitioned by not less than $\frac{2}{3}$ of the resident owners of the land to be transferred. Only territory contiguous to a district may be transferred. Whenever the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached, the action of the county board of education directing such detachment shall not be valid unless approved, at an annual or special election called for that purpose in the district from which the detachment is to be made, by an affirmative vote of a majority of the school tax electors of the district, voting thereon.

Section 462 of The School Code of 1955; 1948 Michigan Compiled Laws, § 340.462; Michigan Statutes Annotated, § 15.3462

Same; notice of meeting and of proposed alteration of boundaries. Sec. 462. The county superintendent of schools shall give at least 10 'days' notice of the time and place of the meeting of the county board of education and of the proposed alteration in school district boundaries to be considered at said meeting, by posting such notice in at least 5 public places in each of the districts whose territory may be affected by such alteration and by publication

at least once prior to such meeting in a newspaper of general circulation in the territory of the affected districts.

Section 467 of The School Code of 1955, as amended; 1948 Compiled Laws of Michigan, § 340.467; Michigan Statutes Annotated, § 15.3467

Same; appeal to state board of education. Sec. 467. Any one or more resident owners of land considered for transfer from 1 district to another, or the board of any district whose territory is affected, may appeal the action of the county board of education or joint boards in transferring such land, or the failure to transfer such land, or the action taken relative to the accounting determination, to the state board of education within 10 days after such action or determination by the county board of education or the joint boards. If the county board of education or the joint boards fail to take action within the time limit prescribed in section 461, the appeal may be made to the state board of education within 10 days following the termination of the period. Such appeal shall have the effect of holding the effectiveness of the resolution from which appealed in abeyance until the appeal is acted upon by the state board of education.

The state board of education is hereby empowered to consider such appeals and to confirm, modify or set aside the order of the county board of education or the joint boards and its action on any such appeal shall be final.

APPENDIX E**THE QUALIFICATIONS OF SCHOOL ELECTORS**

Chapter 4, part 2, of The School Code of 1955, as last amended by Act No. 257 of the Public Acts of 1951, with reference to school elections and the qualifications of school electors under the 1906 Constitution, provided as follows:

School electors; qualifications. Section 1. A school elector shall possess the qualifications provided for qualified electors in section 1, article 3 of the constitution (1908): Provided, That upon questions involving the direct expenditure of public moneys or the issue of bonds, school electors shall possess the qualifications provided in section 4 of article 3 of the constitution: Provided further, That no person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding said election. (C. L. '48, § 354.1; C. L. '29, § 7410.)

Chapter 7, part 2, of The School Code of 1955, as amended, with reference to school elections and the qualifications of school electors under the 1963 Constitution, provides as follows:

School electors, qualifications; repeat elections on proposals. (M.S.A. 15.3511)

Sec. 511. A school elector shall possess the qualifications provided for qualified electors in section 1 of article 2 of the constitution (1963) and statutes enacted thereunder. Upon questions involving the increase of the ad valorem tax limitation imposed by section 6 or article 9 of the constitution for a period of more than 5 years or the issue of bonds, school electors shall possess the qualifications provided in section 6 of article 2 of the constitution. No person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding the election. The same question or measure involving consolidation of school districts, annexation of entire districts, annexation or transfer of a portion of 1 school district to another, or bonding of school districts,

shall not be submitted to the voters of any school district more often than once in 6 months, unless the board is presented with a petition requesting the board to call another election and signed by qualified school electors of the district to the number of not less than 50% of the registered general electors residing in the district as of the date the petition is presented to the board. Any city or township clerk shall certify to the intermediate school district superintendent of schools the number of registered general electors residing in a school district when requested by the intermediate school district superintendent, who shall make the information available to the board of the district.